IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 13707 of 2006(E)

PETITIONER:

JALAJAMMA.P.S., AGED 31 YEARS,
D/O.SUKUMARAN NAIR, PULINILKUNNATHIL VADAKKETHIL,
VAZHAMUTTOM EAST P.O., MALLASSERI,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, HEALTH AND FAMILY
WELFARE (J) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF HOMOEOPATHY,
THIRUVANANTHAPURAM.

3. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM-4.

4. DISTRICT OFFICER, KERALA PUBLIC
SERVICE COMMISSION, DISTRICT OFFICE,
PATHANAMTHITTA.

R1 & 2 BY GOVT. PLEADER SHRI. P.NANDAKUMAR
R3 & 4 BY SC SHRI. P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/12/2006, ALONG WITH W.P(C) NO. 13054 OF 2006 & CONNECTED CASES, THE COURT ON 12/2/2007 DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) Nos.13707, 13054, 12909, 21238, 463, 20111, 18251 & 19494 OF 2006

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Dated this the 12th February, 2007

J U D G M E N T

The question for consideration is identical in this batch of writ petitions. Hence, they are disposed of by this common judgment.

2. The respondent-Commission issued notification dated 27-10-1998 inviting applications for appointment to the post of Pharmacist (Homoeopathy) in the Department of Homoeopathy. Qualifications were prescribed in G.O.(MS) 161/84/HG dated 21-6-1984. Selection process was completed and separate district-wise rank lists were published on various dates between April, 2002 and January 2003. The petitioners in W.P.(C) Nos. 13707, 13054, 12909 and 20111 of 2006 have been included in the rank list published for appointment in Pathanamthitta District. The petitioners in W.P.(C) No. 21238 and 19494 of 2006 have been included in the rank list for Alappuzha District and the petitioner in W.P.(C) No. 18251 of 2006 has been included in the rank list for Thrissur District.

3. On April 12, 1999, the Government of Kerala framed Special Rules for the Kerala Homoeopathy Subordinate Service vide SRO No. 397/1999. The Commission took the view that the candidates who did not possess the amended qualifications are not entitled to be advised for appointment, though they possess the qualifications under the pre-amended Special Rules which govern the field as on the last date fixed for the receipt of applications. The writ petitions filed by some of the candidates for directions to the Commission to operate the rank list and to advise them from the rank list despite the amendment of the Special Rules were dismissed by judgments rendered by the respective learned Judges before whom those cases came up for consideration. The petitioners in those cases filed writ appeals. The matter was considered by a Division Bench of this Court in ***Stalin*** v. ***State of Kerala*** (2006 (1) KLT 493). The Bench held that the Commission had a duty to keep the rank list alive and to advise candidates from the rank lists notwithstanding the amendment to the Special Rules changing the qualification. The Division Bench directed the Commission to advise the candidates. The

Department was directed to appoint them pursuant to the advice. Subsequently, another learned Judge passed reference order in O.P. No. 27117 of 2002 expressing the view that the decision in ***Stalin*** v. ***State of Kerala*** (supra) was rendered without considering the ratio of the decision in ***Kunju Kunju*** v. ***State of Kerala*** {2005 (1) KLT 364}, and therefore, the matter may have to be heard by a Division Bench to resolve the apparent conflict between the two decisions. The Division Bench expressed the opinion that the question required to be placed for the consideration of a larger Bench. Accordingly, the writ petitions which were referred by the Division Bench were heard by a Full Bench of this Court. The question has been answered in ***Mohanan*** v. ***Director of Homeopathy*** {2006 (3) KLT 641 (FB)}. While approving the decision in ***Mohammed Najim*** v. ***State of Kerala*** {1993 (2) KLT 721} the Full Bench held that simply because a person's name is included in the select list, he does not automatically get a vested right for advice or appointment and that the only right he gets is that of consideration for appointment in any vacancy that may arise. The Full Bench further held that the above principle would apply with equal force

to a select list actually in force at the time when amendment occurs, meaning thereby that in such cases also, the vacancies arising subsequent to such amendment can be filled up only in accordance with the amended recruitment rules notwithstanding the currency of the select list. In paragraphs 25 and 26 the Full Bench concluded its views and held as follows:

> "25. Another contention was also raised before us to the effect that if persons included in the rank list do possess the qualification prescribed under the new Rules promulgated with effect from 12-4-1999, they should be given appointment from the very same list. We do not agree. That would lead to anomalous results. Further, that would also violate Articles 14 and 16 of the Constitution of India since persons who became qualified subsequent to the initiation of the recruitment rules would be denied the opportunity to compete for the post in accordance with the newly introduced Special Rules.
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> 26. In the result, we hold that notwithstanding the currency of the rank list prepared and published by the PSC in accordance with the recruitment rules in force prior to the introduction of the Special Rules for the Kerala Homeopathy Subordinate Service, 1999 with effect from 12-4-1999, the vacancies which arose subsequent to the amendment of the Rules on 12-4-1999 shall be filled up only in accordance with the Special Rules promulgated with effect from 12-4-1999."

4. There is no dispute about the fact that the

dictum laid down in Stalin's case stands overruled by the Full Bench in Mohanan v. Director of Homeopathy (supra). That being the unquestionable legal position the petitioners who do not possess the amended qualification are not entitled to be advised for appointment against vacancies arose on and after the amended provisions have come into force. However, learned counsel for the petitioners submitted that in the light of certain advices and appointments that had taken place after the pronouncement of the judgment in Stalin's case and before the judgment of the Full Bench in Mohanan's case (supra), the petitioners are entitled to claim that they shall not be denied benefits granted to candidates whose places in the rank list are lower down in that list when compared to that of the petitioners. It is pointed out that the Commission had advised candidates who have no superior claim over the petitioners. The above action of the Commission, it is contended by the petitioners, is patently violative of the doctrine of equality. The Commission ought to have advised the candidates in accordance with the rank position assigned to the respective candidates and applying the rules of communal reservation, contended

the petitioners. Instead, the Commission indulged in the illegal act of 'pick and choose' and a hostile discrimination has been practiced against the petitioners. Counsel for the petitioners submitted that the benefit of the judgment in Stalin's case ought to have been made available to the candidates included in the rank list according to their rank position, whether or not such candidates were parties before this Court in the writ petitions or writ appeals, because once the Court declares the law, the benefit of such declaration shall be made available to similarly situated persons without infringing the doctrine of equality. It was vehemently contended that the action of the Commission in confining the benefit of the judgment in Stalin's case and other connected writ appeals only to those who were parties to those cases is therefore illegal. Counsel for the petitioners further contended that a subsequent declaration of the correct legal position by the Full Bench will not stand in the way of the petitioners claiming equal treatment as was given by the Commission to candidates who were having only inferior rights when compared to that of the petitioners.

5. Learned counsel for the petitioners placed reliance on a number of decisions in support of the above contention. (See ***K. Dheenadhayalan*** v. ***State of T. Nadu*** {1980 (2) SLR 409 (SC)}, ***Khan*** v. ***Goleccha International Ltd.*** {(1980) 2 All ER 259}, ***Bharathi Amma*** v. ***Kumaran Peethambaran*** (AIR 1990 Kerala 88), ***Som Raj*** v. ***State of Haryana*** {(1990) 2 SCC 653}, ***Ishwar Dutt*** v. ***Land Acquisition Collector*** {AIR 2005 S.C. 3165}, ***State of Kerala*** v. ***Lalitha*** {2006(2) KLT S.N. Case No. 5}, ***Vinitha Saxena*** v. ***Pankaj Pandit*** {2006 (2) KLT 150 (SC)} and ***Union of India*** v. ***Madras Telecom Engineers Forum*** {(2006) 8 SCC 662}. I do not consider it necessary to refer to all of them except the decision of the Supreme Court in ***Union of India*** v. ***Madras Telecom Engineers Forum*** {(2006) 8 SCC 662} which is the latest among them. The ratio of the above decision is that when rights of parties had been determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality.

6. I have heard the respondents' counsel also. Counsel for the Commission submitted that candidates were advised from the rank list pursuant to the judgment in Stalin's case, not because the Commission wanted to do so, but to avoid contempt of court proceedings initiated against some of the appellants who got judgments in their favour from the Division Bench. The Commission had made all attempts to see that the stand taken by it was upheld by the court. But the Division Bench which decided Stalin's case took proceedings under the Contempt of Courts Act. The Commission made attempts to reiterate its stand and it was under the above circumstances the reference orders were passed. Finally, the Commission has vindicated its stand when the Full Bench has laid down the law on the point. In the above circumstances, the petitioners in this batch of writ petitions cannot seek reliefs based on the dictum laid down by the Division Bench in Stalin's case or on the ground that they are entitled to be given equal treatment with those advised for appointment pursuant to the judgment of the Division Bench in Stalin's case.

7. On a consideration of the rival contentions, I

am of the view that the claim made by the petitioners that they shall be advised for appointment from the rank list despite the authoritative pronouncement of the law by the Full Bench in Mohanan's case (supra), cannot be accepted. This Court cannot ignore the binding law that governs the field as matters now stand. It is true that the respondent-Commission has got a duty to advise candidates from the rank list strictly following the rank position of the candidates and the communal rotation, but it deviated from that path. It might have happened in the peculiar fact situation. But such illegalities or deviations cannot be the edifice to build up arguments to sustain the claim of the petitioners. I am of the opinion that the petitioners are not justified in building up a case solely based on such wrong and illegal advices made by the Commission. In this context the submission made by the Commission that they did not issue advice letters voluntarily but under threat of contempt of court proceedings because the Division Bench had directed the Commission to advise the appellants who were parties to the writ appeals, for appointment has also to be borne in mind, though I find it difficult to absolve the

Commission from its responsibility to inform the Court that such directions will disturb the inter se rights of the candidates based on their rank position. In my view, the contention of the petitioners that their fundamental right to equality has been infringed and the further contention that for maintaining equality among the candidates, the Commission shall advise them also, are not based on sound principles of law. As held by the Apex Court in a catena of decisions the concept of equality envisaged in Article 14 of the Constitution of India is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals others cannot claim the same illegality or irregularity on ground of denial to them. Similarly a wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed. It has been held that the doctrine of discrimination has been founded upon

existence of enforcible right. A wrong order cannot be the foundation for claiming equality for enforcement of the same or same kind of order (See ***Ekta Shakti Foundation*** v. ***Govt. of NCT of Delhi*** {AIR 2006 S.C. 2609}.

No doubt, the fate of these cases would have been entirely different had the statement of law in Stalin's case continued to hold the field and had not a different view been taken by the Full Bench in Mohanan's case. I have, therefore, no hesitation to hold that these writ petitions are liable to be dismissed. I do so.

K.K. DENESAN
JUDGE

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